



1 THE COURT: All right. Let's call State v.  
2 Michael Castro, Indictment 13-07-1875 for status  
3 conference and motions. Counsel, may I have your  
4 appearance please?

5 MR. MAHER: Good morning, Judge, John Maher  
6 on behalf of the State.

7 MR. CODY: Good morning, your Honor. Douglas  
8 Cody from Cody Law Firm, Hammonton, New Jersey, on  
9 behalf of the defendant Michael Castro.

10 THE COURT: Thank you, counselors. Let me  
11 summarize our chambers conference and then we'll  
12 proceed. In chambers we did discuss the status of  
13 discovery. I reviewed with counsel Mr. Cody's  
14 correspondence on the subject together with Mr. Maher's  
15 memoranda that indicated the steps that he has taken so  
16 far in order to bring discovery up-to-date. There is  
17 ongoing State's investigation in order to secure  
18 responses to many of Mr. Cody's requests, and my  
19 thinking is to give it an additional four-week  
20 adjournment for discovery purposes so that Mr. Maher  
21 can complete his supplemental and then provide them as  
22 appropriate. Once Mr. Cody has received that, I would  
23 then ask the parties to agree a short list of matters  
24 still in disagreement for submission to the court for  
25 my determination and then I would just call it on the

1 papers at that point, gentlemen, if there is anything  
2 of substance left after the State has completed its  
3 investigation on the issue of discovery. I also  
4 understand that there may be further trial preparation  
5 discovery that will present itself once Mr. Maher  
6 completes his interviews with people who may or may not  
7 be associated with the case, and then providing those  
8 supplementals to Mr. Cody may require additional time  
9 for defense investigation which of course the court  
10 will entertain. Mr. Cody has also informed the court  
11 that there may be motions for the court to consider.  
12 First would be a motion to dismiss the indictment.  
13 Once the discovery is complete, he'll be in a position  
14 to evaluate the probity of such a motion, and then a  
15 motion to suppress any statements made allegedly by the  
16 defendant to the police in the course of investigation.  
17 And at our next status conference I'll get the parties  
18 a scheduling order for those motions. I believe that  
19 correctly summarizes our discussion in chambers.  
20 Anything to add, State?

21 MR. MAHER: Nothing, Judge.

22 THE COURT: Anything to add, defense?

23 MR. CODY: No, your Honor.

24 THE COURT: Thank you. And then I also  
25 believe Mr. Cody has an application on the subject of

1 bail. I have it here in front of me. I'll be happy to  
2 hear you, sir.

3 MR. CODY: Thank you, your Honor. We're  
4 asking the court to grant an order reducing the amount  
5 of bail posted for release to \$275,000 or less.  
6 Obviously with the option to post bail by a surety bond  
7 or bail bond. We look at 3:26-1 under State v.  
8 Johnson, the factors thereunder, Mr. Castro has a  
9 residence available to him in New Jersey through his  
10 stepfather Mr. Wallowitz (phonetic) who submitted an  
11 affidavit along with the bail brief, that he's a  
12 retired Chief Master Sergeant in the air force, has  
13 known Mr. Castro his entire life. He's capable of  
14 providing not only residence, but employment.

15 Mr. Castro has no prior criminal conviction.  
16 He was in the area of New Jersey, in fact, within  
17 several miles of his previous home for a period of  
18 about eight months after the alleged homicide in this  
19 case and returned home to Florida after that eight-  
20 month period. He was arrested some 14 months after  
21 this homicide and he was -- he waived extradition back  
22 here to New Jersey at his first opportunity. The  
23 affidavits and certifications that were submitted  
24 provide evidence of the very strong family support  
25 structure. He has a daughter that obviously he's very

1 close with, you have certifications from his mother,  
2 his stepfather and his fiancée. They are responsible  
3 members for the community vouching for his reliability.  
4 And, in addition, this is a case where there is not a  
5 likelihood of conviction which would compel a greater  
6 bail amount.

7 As we discussed all of the evidence that's  
8 presented in the State's responsive brief and  
9 affidavit, it is essentially circumstantial, there's no  
10 confession or admission by the defendant in this case  
11 or eyewitness testimony. There's no forensic evidence  
12 or scientific evidence connecting the defendant to the  
13 scene weapon nor to the weapon. The State does not  
14 possess a murder weapon, and virtually all the  
15 circumstantial evidence that is listed by the  
16 prosecution in its response brief is either  
17 contradicted by other evidence or lacks sufficient  
18 credibility to give the Court an indication that  
19 there's a likelihood of conviction in this case. And  
20 obviously we're not here to try the case at a bail  
21 hearing, but that's a factor under Johnson the Court  
22 should consider. There's nothing particular about this  
23 case that would indicate that the bail should be set so  
24 high the defendant has no reasonable chance of securing  
25 his release, and unless the amount which is set is set

1 in such a way that it is bondable, there's no practical  
2 way the defendant would be able to be released prior to  
3 his trial in this matter.

4 And finally, I believe that the State cites  
5 the incorrect bail schedule in this matter. My  
6 understanding is that the defendant is essentially at  
7 maximum under the bail schedules that are operative now  
8 at \$1,100,000 and we'd ask that that amount be reduced  
9 to \$275,000 or less.

10 THE COURT: Mr. Cody, thank you for your  
11 argument. State.

12 MR. MAHER: Judge, with respect to the bail  
13 guidelines, I have checked. We have been operating  
14 under the guidelines that were, I guess, distributed by  
15 Judge Donio and indicate after July of 2012, the bail  
16 guidelines were amended to increase the amounts of all  
17 bails but including murder. And I actually called the  
18 Administrative Office of the Courts and they indicated  
19 that that's still in the proposal stage. I believe  
20 we've been operating on it for about a year-and-a-half,  
21 all the judges, in considering bail, but the current  
22 guidelines are actually those that were submitted or  
23 promulgated on May 12, 2009. So as an officer of the  
24 Court, I am going to advise the Court that I do believe  
25 that the maximum, and these are only guidelines, Judge,

1 the bail with guidelines now for homicide,  
2 notwithstanding what was sent out by the AOC and given  
3 to everybody, are still between 250 and a million.

4 Now, Judge, with respect to the facts of this  
5 case, I did submit a brief where I outlined in detail  
6 the facts of the case. We did discuss them in  
7 chambers, but I submit, Judge, that the case, although  
8 circumstantial against Mr. Castro, is strong. I submit  
9 that the fact that he waived extradition should really  
10 have no bearing because, as your Honor knows,  
11 extradition is basically a formality. If you fight  
12 extradition, all you're going to do is just increase  
13 the amount of time before you get brought back to New  
14 Jersey and face the charges that you've been charged  
15 with, so I don't believe that should have any weight.

16 My brief indicates that Mr. Castro does in  
17 fact have prior arrests, but no convictions. He was  
18 arrested in Georgia in 2005 and 2006, in Texas in 2005,  
19 and he was prosecuted under the Universal Code of  
20 Military Justice in 2004. The reason I bring these  
21 things up is because they do show involvement with the  
22 criminal justice system, but, more importantly, they  
23 show involvement with the system other than in the  
24 jurisdiction of New Jersey. He also, as I indicated in  
25 my brief, from looking at his driver abstract, has

1 several failures to appear in traffic court. I know  
2 they're not serious, but they do at least show evidence  
3 of ignoring judicial process, albeit for minor traffic  
4 offenses, but they do indicate what they indicate. The  
5 family -- I have read Mr. Cody's brief -- there are  
6 family members who submit affidavits basically saying  
7 that Mr. Castro is basically a good guy, he could never  
8 have committed a murder. That's not evidence. Judge,  
9 I submit that in many cases family members will feel  
10 that way. They do indicate that they will keep an eye  
11 on him if he is released. Well, that's a question for,  
12 I guess, in all cases. We have to evaluate what we're  
13 looking at here and determine whether or not the  
14 defendant is in fact a flight risk, and based on the  
15 facts of the case, Judge, I believe the likelihood of  
16 conviction is strong.

17 We did go into the facts in chambers and they  
18 are included in my brief, and there were certain things  
19 that in our discussion that came up that I think I  
20 should refer to. It's true that the defendant was not  
21 charged by way of complaint until April of 2013, and  
22 that was a significant period of time after the  
23 homicide in this case, but it's important to note that  
24 in this particular case Megan Bailey, who is the  
25 defendant's fiancée, was not interviewed and a sworn

1 tape recorded statement taken from her until March 22,  
2 2013, and at that point in time, because what she told  
3 the police differed so markedly from what Mr. Castro  
4 had told the police on his whereabouts on the day of  
5 the homicide, it was decided that that was basically  
6 the linchpin, the last piece of evidence that the State  
7 felt was necessary in order to charge in this  
8 particular case. The case basically indicates that  
9 Mr. Castro was suffering -- was in financial distress.  
10 We believe that we do have evidence to indicate that in  
11 the affidavit that was supplied with my brief, among  
12 other things, we have information that Mr. Castro had  
13 submitted checks to Glenn Kingsbury in his business  
14 that had bounced totaling about \$8,000, that he had  
15 purchased gym equipment in the amount of \$12,000 that  
16 had never been paid for, and at the time of this  
17 incident, this murder, the business account of the  
18 business that Mr. Castro operated had just a few  
19 dollars in it, less than maybe \$11 or \$12. So on the  
20 date in question, there was numerous text messages and  
21 phone calls between Mr. Castro and members of the  
22 Kingsbury household that basically, in our opinion,  
23 were in an attempt to find out if anybody was still in  
24 the house, we believe that Mr. Castro having been an  
25 employee of -- Judge, I think I'm kind of wandering

1 around here, but I did submit all of these facts in my  
2 affidavit, I don't want to go over everything because,  
3 as Mr. Cody indicated, it's not a mini-trial, but the  
4 facts show that Glenn Kingsbury ran a business where  
5 large amounts of cash were basically brought back from  
6 various cheer competitions on weekends. That cash  
7 would be in the premises that Mr. Castro had been to  
8 many times because he worked for the Kingsbury Cheer  
9 business, he knew that the cash was there.

10 On the date in question, on the date of the  
11 homicide, there were numerous telephonic and text  
12 messages between Mr. Castro and Mr. Glenn Kingsbury's  
13 girlfriend, Karen Drew, as opposed to just two voice  
14 calls that were noted in our discussion earlier being  
15 at 11:17 and 11:09 a.m., there were also text messages  
16 between Mr. Castro and Miss Drew at 11:22 a.m., 11:38  
17 a.m., 11:40 a.m., 11:59 a.m., 12:28 p.m., 2:19 p.m. and  
18 again at 2:19 p.m., so those messages actually were  
19 within the time frame of the homicide, and the cell  
20 site information that was referred to earlier as being  
21 consistent with Mr. Castro being in the area of the  
22 homicide at the time of the homicide, I submit, is  
23 borne out by the record that the State has at this  
24 point in time.

25 As your Honor is aware, I note from the

1 State's brief that the weapon that was used to commit  
2 the homicide in this particular case was never  
3 recovered, but the weapon that was used has been  
4 identified because Mr. Castro's business partner, one  
5 Lauren Cole, possessed a weapon, and that weapon has  
6 never been recovered, but when she was on vacation in  
7 Florida, when she came home from vacation, after the  
8 homicide in this case, she discovered that that weapon  
9 had been taken. There was no evidence in her house,  
10 according to her, of any kind of burglary or forcible  
11 entry, but that gun in fact was gone. A search warrant  
12 was performed and the box that that gun was sold in was  
13 recovered and there was a spent test shell casing in  
14 that box. That shell casing was sent to the state  
15 police lab and compared to the shell casings that were  
16 found on the scene, it was determined that the same gun  
17 would have to have been Lauren Cole's, that's her name,  
18 that was Mr. Castro's business partner, had to be her  
19 gun that had in fact killed John Kingsbury. So because  
20 of the fact that the only person that we're aware of  
21 who had access to Lauren Cole's house by way of key was  
22 Mr. Castro, and in fact we have text messages  
23 indicating he in fact was in her house picking up  
24 checks for the business that they ran in Hammonton at  
25 or around the time of the homicide leads us to believe

1 that he was the only person who had access to the  
2 weapon that was used to kill Mr. Kingsbury. He had  
3 motive, and we have evidence that he was in the area of  
4 the murder at the time of the murder. In addition to  
5 that, there was also his car which is a metallic blue  
6 Kia, witnesses -- and it's in the affidavit of Sergeant  
7 Mattioli that's attached to my moving papers --  
8 witnesses in the area, and I will state that the area  
9 is a rural area that does not have much traffic through  
10 it, and witnesses in that area who take notice  
11 apparently of everything that goes on in that area  
12 identified a car by way of a color as being metallic  
13 blue which is similar to Mr. Castro's car, and I submit  
14 that it's not the type of car that is commonplace.

15 So, Judge, that's basically the State's case;  
16 it's a case of circumstantial evidence. We don't have  
17 any witnesses that Mr. Castro in fact committed this  
18 homicide, but I submit that we have strong  
19 circumstantial proofs to show that he had motive,  
20 opportunity to do it, and I think, Judge, under all the  
21 circumstances, that the bail is appropriate as set.

22 THE COURT: Thank you, counselors. Chris,  
23 would you just check the bail screen for me and let me  
24 know what the status is.

25 THE CLERK: \$1,100,000.

1 THE COURT: And any conditions set by the  
2 Court previously on the bail?

3 MR. MAHER: Judge, if I may, I have the  
4 original copies of the complaints if you want me to  
5 show -- if you want us to approach. Judge Baker did  
6 set one million on the bail, and then on a separate  
7 complaint charging weapons offenses, he set an  
8 additional hundred thousand dollars, which is little  
9 out of the ordinary.

10 THE COURT: I want to see if it had been  
11 blanketed or anything else. So it's one million on the  
12 one warrant and a hundred thousand on the other.

13 This is a bail review regarding Michael  
14 Castro being held in default of total bail of  
15 \$1,100,000 on complaints now subsumed by Indictment  
16 13-07-1875. The Court has considered the briefs  
17 submitted by both sides and the arguments of counsel  
18 here today, and in reviewing the Johnson factors I  
19 conclude as follows: This is a serious offense, most  
20 serious obviously in our code as a crime of the  
21 first-degree murder. Upon conviction, the presumption  
22 of imprisonment does apply, the minimum sentence is 30  
23 do 30, maximum is life. That balance is in favor of  
24 the State that it would be a sentence that the  
25 defendant would seek to avoid if he could. On the

1     likelihood of conviction or extent of punishment, I've  
2     discussed that likelihood of conviction in this case.  
3     Without performing a mini-trial that both sides have  
4     said they don't want to do today, nor do I, it does  
5     appear to be a circumstantial case and there are  
6     certainly arguments and circumstances on both sides  
7     that would abide trial rather than bail review, that  
8     factor is in equipoise.

9             The criminal record of this defendant, he has  
10    no serious record. He has no criminal record. He has  
11    minor non-judicial punishment in his past. When  
12    associated with the military, has some failures to  
13    appear with respect to minor traffic offenses. His  
14    reputation in the community appears to be good. I  
15    reviewed all the submitted letters in support from  
16    family members and friends, and those weigh in his  
17    favor. He does have ties to the local community as  
18    evidenced by that. I do take note of the fact,  
19    however, that he does have significant ties out of  
20    state in the State of Florida where he was found and  
21    returned here on a warrant. Does appear to have a  
22    record of employment, otherwise appears to be a  
23    responsible member of the community. I've considered  
24    the bail schedules as well. Mr. Maher is correct, the  
25    bail guidelines that have been distributed by the Court

1 are still in proposed status. I have been using the  
2 '09 schedules myself, and the high end of the bail  
3 range for murder is \$1,000,000, starts at \$250,000  
4 rather than the \$3,000,000 range which is suggested by  
5 the proposed guidelines. I will adjust bail because it  
6 is outside of the current guidelines, and in view of  
7 the fact that this defendant does not have a prior  
8 criminal record and the case does appear to be  
9 circumstantial. However, a substantial bail is  
10 required in order to ensure his presence for further  
11 proceedings. Bail will be adjusted to \$800,000. GPS  
12 monitoring is required. Work, worship, medical, court  
13 appearances, not to leave the state or Atlantic County  
14 without court permission. No contact with any victim  
15 survivors or witnesses in the case except through  
16 counsel. Set the matter down for a further status  
17 conference on I can either give you October 21st or the  
18 23rd, counselors. How do your calendars look?

19 MR. MAHER: I'm fine with either one, Judge.

20 MR. CODY: Judge, October 23rd, I think,  
21 would be good.

22 THE COURT: Set it down for October 23rd. No  
23 other changes to the bond condition and make it  
24 blanket. It's on the indictment now, so it doesn't  
25 have to be. Okay.

1 MR. CODY: Judge, may I require is that cash  
2 only or is that bond?

3 THE COURT: It's bondable, cash or bond. I  
4 saw it was full cash, it didn't say cash only on the  
5 original warrants, I believe, but every judge seems to  
6 use a different phrase, no 10 percent, okay. All  
7 right, thank you, counselors.

8 MR. CODY: Thank you, your Honor.


9 MR. MAHER: Appreciate it.

10 (At this time the matter was concluded)

11 \*\*\*\*\*  
12

13 CERTIFICATION  
14

15 I, ADELE TALASNIK, C.S.R., License Number X101087, an  
16 Official Court Reporter in and for the State of New  
17 Jersey, do hereby certify the foregoing to be prepared  
18 in full compliance with the current Transcript Format  
19 for Judicial Proceedings and is a true and accurate  
20 non-compressed transcript to the best of my knowledge  
21 and ability.

22   
23 Official Court Reporter  
24 Atlantic County Courthouse  
25

1/14/14  
Date